

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

RUSSELL HUBBELING,

CIV 98-4176

Petitioner,

ORDER

vs.

UNITED STATES OF AMERICA,

Respondent.

This matter is before the Court on Petitioner Russell Hubbeling's motion for a new trial pursuant to Federal Rule of Civil Procedure 60(b)(6). (Doc. 37.) Also pending is Petitioner's motion for adverse inference. (Doc. 50.)

For the reasons set forth in the Memorandum Opinion and Order issued on this date in *Desmond Rouse and Jesse Rouse v. United States of America*, CIV 06-4008, the Court denies Petitioner's request for relief under Rule 60(b)(6) and dismisses the motion for failure to obtain authorization from the Eighth Circuit to file a second or successive motion under § 2255. The motion for adverse inference is also denied for the same reasons set forth in the Memorandum Opinion and Order in the *Rouse* case.

CERTIFICATE OF APPEALABILITY

The Court finds that a reasonable jurist could conclude that this Court erred in finding that Petitioner's Rule 60(b)(6) motion is in effect a second or successive § 2255 motion and dismissing the motion. Accordingly, after careful review and consideration, the Court grants a Certificate of Appealability.

IT IS ORDERED:

1. That Petitioner's motion for a new trial under Rule 60(b)(6), Doc. 37, is actually a second or successive §2255 motion that must be dismissed for failure to obtain authorization from the Eighth Circuit;
2. That a Certificate of Appealability is granted on the issue whether Petitioner's Rule 60(b)(6) motion is in effect a second or successive § 2255 motion;
3. That Petitioner's motion for an adverse inference, Doc. 50, is denied.

Dated this 18th day of March, 2020.

BY THE COURT:

Lawrence L. Piersol
Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

Matthew Thelen